

**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY**

EPCOR Merchant and Capital (US) Inc.

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Docket No. EA-260-A

**APPLICATION TO RENEW EPCOR MERCHANT AND CAPITAL (US) INC.'S
AUTHORITY TO EXPORT ELECTRIC ENERGY TO CANADA**

Pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824a(e), the Department of Energy's ("DOE") Regulations set forth in 10 C.F.R. § 205.300 *et seq.* (the "Regulations"), and Order No. EA-260, which granted EPCOR Merchant and Capital (US) Inc.'s ("EMC") initial application to export electric energy from the United States to Canada, EMC hereby applies to renew EMC's blanket authority to export electric energy. EMC requests that authorization be granted for a five year term from the effective date of the DOE order.

Due to an inadvertent administrative oversight, EMC failed to file this Application prior to the expiration of its original electric energy export authorization on April 8, 2004.¹ EMC filed this Application promptly after becoming aware of the lapse. EMC continued to export electricity at volumes of, on average, approximately 22,000 MW monthly since April 8. Specifically, it exported 9,169 MW in April, 24,733 MW in May and 33,245 MW in June. EMC has at all times remained in compliance with the requirement to report its export activity to DOE on a quarterly basis.

In order to obtain proper authorization for its electric energy exports from the United States to Canada between April 8 and the date of a DOE order on this renewal

¹ *EPCOR Merchant and Capital (US), Inc.*, Order No. EA-260 (Apr. 8, 2002) ("EMC Authorizing Order").

application, EMC respectfully asks that the DOE order on this Application become effective as of April 8, 2004. Alternatively, EMC requests any waivers necessary to authorize its electric energy export activity during this interim period.

I. CONTENTS OF APPLICATION

In accordance with § 205.302 of the Regulations, EMC states the following:

A. Legal Name of Applicant

The legal name of the Applicant is EPCOR Merchant and Capital (US) Inc.

B. Legal Name of All Partners

EMC has no partners.

C. Persons to Whom Correspondence Shall be Addressed

All correspondence and communications regarding this Application should be addressed to the following individuals:

Riaz Jessa
Transaction Accounting Assistant
EPCOR Merchant and Capital (US) Inc.
EPCOR Place
8th Floor, 505 - 2nd Street S.W.
Calgary, Alberta T2P 1N8
CANADA
Tel: (403) 717-4672
Fax: (403) 717-4601
E-mail: rjessa@epcor.ca

Sandra E. Rizzo, Esq.
Preston Gates Ellis
& Rouvelas Meeds, LLP
1735 New York Avenue, NW, Suite 500
Washington, DC 20006
Tel: (202) 661-3776
Fax: (202) 331-1024
E-mail: sandrar@prestongates.com

D. State or Territory of Incorporation

EMC is a Delaware corporation with its principal place of business at 505 – 2nd Street S.W., 8th Floor, Calgary, Alberta, Canada, T2P 1N8. EMC is an indirect, wholly owned subsidiary of EPCOR Utilities Inc. of Edmonton, Alberta, Canada.

E. Government Agencies Having Jurisdiction Over Action to Be Taken

Pursuant to Section 202(e) of the FPA, DOE has jurisdiction over the activity for which authorization is sought in this renewal application -- namely exporting electric energy to Canada. No other federal, state, or local government agency has jurisdiction over the activity to be conducted in accordance with the authorization received pursuant to this Application except to the extent that EMC must comply with the regulations of the Federal Energy Regulatory Commission ("FERC") in making sales at wholesale of electric energy in the United States. FERC exercises regulatory authority over the rates for the transmission and sale of electric energy at wholesale in the United States.

F. Description of Transmission Facilities

EMC intends to export electric energy over the existing transmission facilities of various entities identified in Exhibit C. Exhibit C identifies the location, voltage and owner of the implicated facilities and provides information regarding the implicated Presidential Permits issued to the owners. EMC's export activity generally has been limited to the use of facilities owned by Bonneville Power Administration ("BPA") and the New York Power Authority. However, during the term of its renewal authorization, EMC may wish to use additional facilities such as those listed in Exhibit C.

G. Technical Discussion of the Proposed Export of Electricity

EMC is a power marketer,² engaged in the business of marketing electric energy in the United States and Canada. EMC will take title to electricity it exports to Canada.

² As used herein, the term power marketer refers to an entity that buys and sells electric energy at wholesale. On March 1, 2002, FERC authorized EMC to sell wholesale electric energy at market-based rates. See *EPCOR Merchant and Capital (US) Inc.*, Docket Number ER02-783-000 (Letter Order issued Mar. 1, 2002).

EMC does not own or control any electric generation facilities³ or transmission facilities in the United States and does not have a franchised service area in the United States. In the instant application, EMC seeks to renew its authority to engage in open-ended transactions to export electricity to Canada under terms and conditions to be negotiated in the future.

Before granting an export authorization, DOE must find that the proposed export will not impair the sufficiency of the electricity supply within the United States and will not impede the coordinated use of regional transmission facilities.⁴ The DOE's initial conclusion that EMC's proposed export of electricity will not impair the sufficiency of the electric supply within the United States remains valid.⁵ EMC is a power marketer that owns no generation or franchised service territory. Instead, EMC will purchase energy for export that is not needed by the seller and thus by definition is surplus to the system of the seller. EMC's export activity will not impair the sufficiency of the power supply in the United States.

EMC will make all necessary commercial arrangements and will obtain all required regulatory approvals to effect any power exports. Specifically, EMC will schedule each transaction with the appropriate control area in compliance with good utility practice and the appropriate market rules and will obtain all necessary transmission access over the existing facilities listed in Exhibit C.

As DOE noted in the order granting EMC's initial export authorization:

³ EMC's affiliate, Frederickson Power L.P., owns a 49.85% undivided ownership interest in a nominal 249 MW generating station in Frederickson, Washington.

⁴ 16 U.S.C. § 824a(e)(2000).

⁵ EMC Authorization Order at 4.

In determining reliability impact for exports by power marketers or other entities operating in a similar manner, DOE has used a combination of established industry guidelines, operating procedures and/or infrastructure, as well as technical studies supporting authorizations issued for traditional entities operating at the border. Allowing these existing technical studies to suffice in this docket is sound and, thus, DOE need not perform additional reliability assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the previously authorized limit of the system.⁶

EMC respectfully requests that DOE continue to apply this standard to this Application.

In the meantime, EMC commits to abide by all applicable export limits on transmitting facilities, including those of the border facilities it uses. EMC also commits to comply fully with the terms and conditions of any export authorization granted to it by DOE. In addition, EMC agrees to abide by the transmission limits DOE recognizes for the transport of electric energy over the BPA's and the New York Power Authority's international transmission ties. EMC's proposed electric energy exports to Canada will not impair the sufficiency of energy supply within the United States or impede regional coordination of electricity utility planning or operation.

H. Verification

The signed verification of James Oosterbaan, Senior Vice President, Merchant Operations, is attached to this Application as Exhibit G.

II. REQUIRED EXHIBITS

Pursuant to § 205.303 of the Regulations, EMC provides the following Exhibits to support its request for authorization to export electric energy to Canada.

⁶ *Id.* at 2.

Exhibit A: Agreement or Proposed Agreement Under Which the Electricity Is To Be Transmitted. EMC is seeking blanket approval to negotiate export agreements in the future. This filing requirement is not applicable.

Exhibit B: Signed Opinion of Counsel

Exhibit C: Map showing Applicant's Electrical System and the Location of Generation and Transmission Facilities to be used in the Exporting of Electricity to Canada. EMC is a power marketer with no electrical system or system maps. EMC has included a list of all the proposed border transmission facilities that EMC may use to export electricity to Canada in Exhibit C.

Exhibit D: Designation of Power of Attorney by Applicant Having Principal Office Outside of the United States

Exhibit E: Statement of Corporate Relationship between Applicant and any Other Person Relating to the Control or Fixing of Rates for the Purchase or Sale of Transmission of Electric Energy

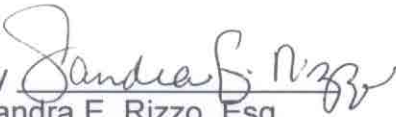
Exhibit F: Operating Procedures to Notify Neighboring Electric Utilities of Capacity and Energy Available in the United States before Delivery of Such Capacity to a Foreign Purchaser

Exhibit G: Verification by James Oosterbaan, Senior Vice President, Merchant Operations, of Facts and Representations in this Application

III. CONCLUSION

For the reasons set forth above, EMC respectfully requests that the DOE expeditiously consider the instant application and grant its request for authorization to export electric energy to Canada effective as of April 8, 2004.

Respectfully submitted,

By 

Sandra E. Rizzo, Esq.

Preston Gates Ellis

& Rouvelas Meeds LLP

1735 New York Avenue, NW, Suite 500

Washington, DC 20006

Dated: July 8, 2004

Attorney for EPCOR Merchant and Capital (US) Inc.

EXHIBIT A
Agreement or Proposed Agreement
Under Which Electricity Is to Be Transmitted

Not Applicable.

EXHIBIT B

Legal Opinion of Corporate Counsel of EPCOR Merchant and Capital (US) Inc.

July 8, 2004

Mr. Anthony J. Como
Manager, Electric Power Regulation
Office of Utility Systems of the
Economic Regulatory Administration
Office of Fossil Energy
U.S. Department of Energy
Forrestal Building, Room 3E-033
1000 Independence Ave., S.W.
Washington, D.C. 20585

Re: Application of EPCOR Merchant and Capital (US) Inc. to Renew
Authorization to Export Electric Energy to Canada; Docket No. EA-260

Statement and Opinion of Counsel

Dear Mr. Como:

Pursuant to 10 C.F.R. Section 205.303(c), this Statement and Opinion of Counsel is hereby furnished in connection with the Application of EPCOR Merchant and Capital (US) Inc., or the "Company," to renew its authority to export electric energy from the United States to Canada and in accordance with Section 202(e) of the Federal Power Act. The Application, being filed today contemporaneously with this Statement and Opinion of Counsel, seeks a renewal of EPCOR Merchant and Capital (US) Inc.'s authority to export electric energy to Canada. In furtherance of the Company's Application, the undersigned states:

- 1) I am an attorney licensed to practice law in the District of Columbia.
- 2) EPCOR Merchant and Capital (US) Inc. is a corporation duly-organized, existing and in good standing under the laws of the State of Delaware.
- 3) EPCOR Merchant and Capital (US) Inc. has the corporate power and authority to export electricity to Canada as specified in the Officer's Certificate accompanying this Statement and Opinion of Counsel.

- 4) To the best of my knowledge, information, and belief formed based upon a review of the Company's Amended and Restated Certificate of Incorporation, contact with the Delaware Division of Corporations, and in reliance on the Officer's Certificate, EPCOR Merchant and Capital (US) Inc. continues to have the requisite corporate power to engage in the proposed electric energy export transactions.

Sincerely,

PRESTON GATES ELLIS & ROUVELAS MEEDS LLP

A handwritten signature in cursive script, appearing to read "Sandra E. Rizzo", followed by a stylized flourish.

By: Sandra E. Rizzo

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OFFICER'S CERTIFICATE
OF
EPCOR MERCHANT AND CAPITAL (US) INC.

The undersigned, James Oosterbaan, hereby certifies that he is the Senior Vice President of EPCOR Merchant and Capital (US) Inc., a Delaware corporation ("the Company"), and further certifies on behalf of Company as follows:

1. The Company has been duly incorporated and is validly existing and in good standing under the laws of the State of Delaware, and no dissolution or liquidation proceedings have been commenced or are contemplated by the Company.

2. The Company has the corporate power and authority to export electricity to Canada in accordance with the terms of the Application.

EPCOR Merchant and Capital (US) Inc.

By:


James Oosterbaan, Senior Vice President,
Merchant Operations

Dated as of July 22, 2004

Subscribed and sworn to before me
this 22th day of July 2004


Notary Public

GRAHAM W. JONES
BARRISTER AND SOLICITOR

My Commission expires: _____

EXHIBIT C
List of All Proposed Border Facilities

<u>Presidential Permit Holder</u>	<u>Permit Number</u>	<u>Voltage</u>	<u>Location</u>
Basin Electric Power Cooperative	PP-64	230-kV	Tioga, ND
BPA	PP-10	2-500 kV	Blaine, WA
	PP-36	230-kV	Nelway, WA
	PP-46	230-kV	Nelway, WA
Vermont Electric Power Co.	PP-66	120-kV	Derby Line, VT
Eastern Maine Electric Cooperative	PP-32	69-kV	Calais, ME
International Transmission Company	PP-230	345-kV	St. Clair, MI
		230-kV	Marysville, MI
		230-kV	Detroit, MI
		230-kV	St. Clair, MI
Joint Owners of Highgate Project	PP-82	120-kV	Highgate, VT
Long Sault, Inc.	PP-24	2-115-kV	Massena, NY
Maine Electric Power Company	PP-43	345-kV	Houlton, ME
Maine Public Service Company	PP-12	69-kV	Limestone, ME
	PP-12	69-kV	Fort Fairfield, ME
	PP-29	138-kV	Aroostock County, ME
	PP-29	2-69-kV	Madawaska, ME
Minnesota Power, Inc.	PP-78	115-kV	International Falls, MN
Minnkota Power Cooperative, Inc.	PP-61	230-kV	Roseau County, MN
New York Power Authority	PP-56	765-kV	Massena, NY
	PP-25	2-230-kV	Massena, NY
	PP-74	2-345-kV	Niagara Falls, NY
	PP-30	230-kV	Devils Hole, NY
Niagara Mohawk Power Corp.	PP-190	230-kV	Devils Hole, NY
Northern States Power Company	PP-45	230-kV	Red River, ND
	PP-63	500-kV	Roseau County, MN
Vermont Electric Transmission Co.	PP-76	450-kV DC	Norton, VT

EXHIBIT D
Power of Attorney for Applicants Residing Outside of the United States

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Irrevocable Limited Power of Attorney

Be it known that, I, David R. Wright, Q.C., Executive Vice President, General Counsel and Corporate Secretary of EPCOR Merchant and Capital (US) Inc., a Delaware Corporation, ("Principal"), with its principal place of business at 8th Floor 2nd Street S.W., Calgary, Alberta, T2P 1N8, Canada, do hereby grant a limited power of attorney to my designated agent, Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue NW, Suite 500, Washington, DC 20006-5209 as my attorney-in-fact ("Attorney in Fact"), for the limited purposes of receiving service of process for all matters relating to or arising from the Principal's Application to Renew Authorization to Export Electric Energy to Canada before the Department of Energy.

This Power of Attorney is irrevocable by the Principal, subject only to the Principal's right to re-designate, or substitute the Attorney in Fact upon 30 days' prior notice to the Department of Energy and the Attorney in Fact.

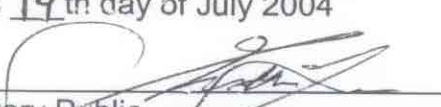
IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be executed on this 19th day of July, 2004.

EPCOR Merchant and Capital (US) Inc.

By: 

David R. Wright, Q.C.
Executive Vice President
General Counsel, Corporate Secretary,
EPCOR Utilities Inc.

Subscribed and sworn to before me
this 19th day of July 2004


Notary Public

GRAHAM W. JONES
BARRISTER AND SOLICITOR

My Commission expires: _____

EXHIBIT E

Existing Relationship or Existing Contracts Relating to Control or Fixing of Rates

Not Applicable.

EXHIBIT F
Operating Procedures Relating to Available Capacity and Energy

Not Applicable.

EXHIBIT G
VERIFICATION BY EPCOR MERCHANT AND CAPITAL (US) INC.

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EPCOR Merchant and Capital (US) Inc.)
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Verification


Province of Alberta)

I, James Oosterbaan, being duly sworn, state that I am Senior Vice President of EPCOR Merchant and Capital (US) Inc.; that I am authorized to execute this verification; that I have read the foregoing document and its exhibits and attachments and am familiar with the contents thereof; and that to the best of my knowledge and belief, all allegations of fact contained therein are true and correct.



James Oosterbaan
Senior Vice President, Merchant Operations

Subscribed and sworn to before me
this 22 th day of July 2004



Notary Public

GRAHAM W. JONES
BARRISTER AND SOLICITOR

My Commission expires: _____